

THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH THE ORDER (AS DEFINED BELOW) CREATE AN AGREEMENT (THE "AGREEMENT") BETWEEN ROGUE WAVE SOFTWARE, INC. ("ROGUE WAVE") AND THE INDIVIDUAL OR SINGLE ENTITY SPECIFIED IN THE ORDER ("COMPANY") CONCERNING COMPANY'S USE OF THE SOFTWARE SPECIFIED IN THE ORDER. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE INSTALLING OR USING THIS SOFTWARE. ROGUE WAVE IS ONLY WILLING TO GRANT COMPANY A LICENSE TO USE THE SOFTWARE ON THE CONDITION THAT COMPANY ACCEPTS ALL TERMS AND CONDITIONS IN THE AGREEMENT.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW, OR BY INSTALLING OR USING THIS SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THE AGREEMENT, UNDERSTAND IT, HAVE THE AUTHORITY TO AND HEREBY DO BIND THE COMPANY TO IT. IF YOU DO NOT AGREE TO THE FOREGOING, ROGUE WAVE IS UNWILLING TO LICENSE THE SOFTWARE, AND YOU SHOULD CLICK ON THE "DO NOT ACCEPT" BUTTON BELOW TO DISCONTINUE THE INSTALLATION PROCESS. IN SUCH CASE, YOU MAY, WITHIN TEN (10) DAYS AFTER YOUR RECEIPT OF THE SOFTWARE, RETURN IT, ALONG WITH ITS ORIGINAL PACKAGING AND PROOF OF PURCHASE, AND YOU WILL RECEIVE A REFUND OF THE PURCHASE PRICE.

1. DEFINITIONS.

1.1 "Application" means a software application created by Licensed Developers that makes use of the Products. Unless otherwise specified in the Order, an Application includes any such software applications created by Licensed Developers on behalf of Company.

1.2 "Documentation" means the user guides, manuals and on-line help provided by Rogue Wave to Company for Company's installation and/or use of the Products.

1.3 "Licensed CPU" means an individual central processing unit, consisting of one or more cores, owned or leased by Company or contractors under Company's control, located at the Permitted Site, for which Company has paid the deployment license fees specified in the Order required to authorize Company to deploy the Products on such CPU. Multi-core CPUs are priced based on the type of CPU and number of cores.

1.4 "Licensed Developer" means an individual software developer, employed by or under contract to Company, located at the Permitted Site, authorized by Company to use the Products to develop Applications on behalf of Company.

1.5 "Maintenance and Support" means the technical support and software maintenance services on the Products provided to Company in connection with its use of the Products as specified in the Order.

1.6 "Order" means the quotation provided by Rogue Wave and accepted by Company or agreement signed by the parties that specifies the Products and the number and cost of Licensed CPUs, Licensed Developers, and any limitations as to Application, or Permitted Site, as well as Maintenance and Support and payment details, as applicable.

1.7 "Permitted Site" means the facility owned or leased by Company or contractors under Company's control, where the Licensed Developers and/or Licensed CPUs shall be located. Unless otherwise specified in the Order, all facilities owned or leased by Company or contractors under Company's control shall be Permitted Sites.

1.8 "Product(s)" means the computer software products specified in the Order, delivered by Rogue Wave to Company, in machine-readable object code form, and/or in human readable source code form that are owned or licensed by Rogue Wave and

to which Company is granted a license pursuant to the Agreement, including the media, Documentation and Updates, but excluding any open source or other-vendor software that may be distributed with the products or recommended in connection with the installation and/or use of the products that are separately licensed by the copyright holders thereof.

1.9 "Update" means an error correction, patch, bug fix, minor modification or new release of the Product that is generally made available to purchasers of Maintenance and Support at no additional charge. Updates shall not include any major modifications, options or future products that Rogue Wave, in its sole discretion, determines to license separately and for which Rogue Wave elects to charge a separate license fee.

2. LICENSE.

2.1 Paid-Up License. Subject to Company's payment of the fees specified in the Order and the terms and conditions of the Agreement, Rogue Wave grants to Company a perpetual (except as specifically provided in Section 7), non-exclusive, non-transferable, non-sublicensable right and license: (a) to permit Licensed Developers to use the Products to create, compile and test Applications; (b) to deploy the Applications on Licensed CPUs; and (c) to copy or have copied the Products as necessary for the purpose of exercising the rights granted in this Section 2 or for back-up or disaster recovery purposes, provided that Rogue Wave's copyright notice and other proprietary rights notices are reproduced on each copy.

2.2 Evaluation License. If Company has been provided with a copy of the Product for evaluation purposes, Rogue Wave grants to Company, subject to the terms and conditions of the Agreement a non-exclusive, nontransferable, non-concurrent, limited, internal-use license for evaluation purposes only. This license is for a period of thirty (30) days, commencing upon receipt of the Product, or, if received electronically, from your initial downloading date, to evaluate the Product; provided that Rogue Wave may by written notice to Company extend the term. If the Product is acceptable, you agree to promptly notify your Rogue Wave Sales Representative. Otherwise, upon the expiration of the evaluation period, you shall immediately cease any further use of the Product, and return all copies of the Product (including the original) to Rogue Wave or destroy all copies of the Product (including the original) and related Documentation provided to you by Rogue Wave and provide Rogue Wave written confirmation that you have done so.

3. RESTRICTIONS.

3.1 General Restrictions. All rights not specifically granted herein are retained by Rogue Wave. Except as expressly authorized herein, Company shall not transfer, sublicense, or re-license the Products, or use the Products for third-party transactions, commercial time-sharing, rental or service bureau use or publicly perform or publicly display the Products. Company shall not cause or permit the reverse engineering (except to the extent allowed by local law), disassembly or decompilation of the Products. Except as expressly provided above, no copies of the Products shall be made without Rogue Wave's prior written consent. All copies of the Products are subject to the terms of the Agreement.

3.2 Development Restrictions. If one Licensed Developer ceases to be employed by or under contract to Company or permanently ceases work on projects involving the Products, Company may designate an alternate developer to replace such

Licensed Developer at no additional cost. However, the development license is not a concurrent license that may be used by numerous developers in shifts.

3.3 Deployment Restrictions. If a Licensed CPU on which Products have been deployed fails or is permanently decommissioned or taken out of service, Company may designate an alternate equivalent CPU to replace such Licensed CPU at no additional cost. However, the deployment license is not a concurrent license that may be used on numerous CPUs in shifts. Company may change the Permitted Site only with Rogue Wave's prior written consent, which consent will not be unreasonably withheld.

3.4 Distribution Restrictions. Except as may be otherwise specified in a signed Order, Company has no right to copy for distribution, distribute or permit deployment of the Products or Applications on CPUs or at facilities not owned or leased by Company or contractors under Company's control.

3.5 Proprietary Protection. Rogue Wave shall have sole and exclusive ownership of all right, title, and interest in and to the Products and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to Company herein by Rogue Wave. The Agreement does not provide Company with title or ownership of the Products, but only a right of limited use. The Products are licensed and not sold. Company must keep the Products free and clear of all claims, liens, and encumbrances.

3.6 Compliance Verification. On Rogue Wave's written request, not more frequently than annually, Company shall furnish Rogue Wave with a signed certification (a) verifying that the Products are being used pursuant to the terms of the Agreement; and (b) listing the locations of the Permitted Sites. Rogue Wave may, at its expense, audit Company's use of the Products. Any such audit shall be conducted during regular business hours at Company's facilities and shall not unreasonably interfere with Company's business. If Rogue Wave's audit reveals any material nonconformance with the Agreement, Company shall be responsible for the audit expenses incurred by Rogue Wave and shall pay any amounts owed within fifteen (15) days of the date of receiving notice of such amounts due.

3.7 Confidentiality of Source Code. Company agrees to maintain in confidence any source code delivered to Company by using at least the same physical and other security measures as Company uses for its own confidential technical information and documentation, but in no case less than reasonable measures. Company further agrees not to disclose any source code, or any aspect thereof (including, without limitation, header files), to anyone other than employees or contractors who have a need to know or obtain access to such information in order to support Company's authorized use of the Products and are bound to protect such information against any other use or disclosure. These obligations shall not apply to any information generally available to the public, ascertainable based on the operation of the binary code version of Applications, independently developed or obtained without reliance on Rogue Wave's information, or approved for release by Rogue Wave without restriction.

3.8 Development of Applications. The Products are intended for use by sophisticated developers. Company is responsible for selecting persons who are qualified to use the Products on Company's own equipment and are familiar with the Products. Company is also responsible for ensuring a proper environment and proper utilities for the development and execution of Applications utilizing the

Products. Company represents that it has the requisite expertise to evaluate the suitability of the Products and that it has undertaken its own investigation of the suitability of the Products in the Applications. Company represents that it has relied upon its own skill and judgment in selecting the Products and developing the Applications.

3.9 Relationship with End Users. There are no third party beneficiaries to the Agreement. Consequently, Rogue Wave provides no warranty at all to any person, other than the limited warranty provided to Company hereunder. Company will be solely responsible for the development of the Applications authorized by the Agreement and for providing all support or services required or requested by end users of the Applications. Company will not make any representations or warranties to its employees, customers, end users or any other third party on Rogue Wave's behalf. Rogue Wave assumes no responsibility under the Agreement, either directly or indirectly, for damages to Company or third parties resulting from the direct or indirect use of the Applications created by or on behalf of Company.

3.10 Remedies. Company acknowledges that, in the event of Company's breach of any of the foregoing provisions, Rogue Wave will not have an adequate remedy in money or damages. Rogue Wave will therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without posting a bond. Rogue Wave's right to obtain injunctive relief shall not limit its right to seek further remedies.

4. MAINTENANCE AND SUPPORT. Maintenance and Support services provided by Rogue Wave are provided in accordance with Rogue Wave's standard maintenance and support and obsolescence policies, which are subject to change. Maintenance and Support is limited to platforms listed on Rogue Wave's current product support matrix, which is also subject to change. Company is responsible for ensuring that its development and deployment environment is on the current product support matrix.

5. LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.

5.1 Limited Warranty. Rogue Wave warrants to Company that, for a period of sixty (60) days from initial delivery of the initial release of the Products to Company, the Products will, when properly installed and used in accordance with the Documentation supplied to Company, perform substantially in accordance with the specifications for the Products as described in the applicable Documentation. As Company's exclusive remedy and Rogue Wave's sole obligation for breach of this warranty, Rogue Wave shall use commercially reasonable efforts to correct any reproducible error in the Products constituting a breach of the warranty at no additional charge. Rogue Wave does not warrant that Company's use of the Products will be error-free, virus-free or uninterrupted. Rogue Wave warrants that any media upon which Rogue Wave provides the Products to Company shall be free of defects in materials and workmanship for a period of sixty (60) days from delivery of such media to Company. As Company's exclusive remedy and Rogue Wave's sole obligation for breach of this warranty, Rogue Wave shall provide Company with a new copy of such Product in non-defective media at no additional charge.

5.2 Exclusions. The limited warranty set forth above will not apply to defects resulting from, or because of, modifications made to the Products by anyone other than Rogue Wave, misuse, failure of media not furnished by Rogue Wave, operation with media, software or equipment not authorized by Rogue Wave in the

Documentation or not meeting or not maintained in accordance with the supplier's specifications, or causes other than ordinary use. The warranty set forth above will not be enlarged, diminished or affected by, and no obligation or liability will arise from, Rogue Wave's rendering of technical advice, assistance or service in connection with Company's selection or use of the Products. Certain open source or other-vendor software may be distributed with the Products or recommended in connection with its installation and use. Such products are provided or recommended for Company's convenience only. Rogue Wave makes no representation or warranty of any kind regarding such products. Rogue Wave offers no support for such products and shall have no liability associated with their use. Company's use of these products shall be in accordance with the licenses for such products, copies of which are included with the products and/or in the Documentation.

5.3 DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.1 ABOVE, THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. ROGUE WAVE SPECIFICALLY DISCLAIMS ALL OTHER PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE OR COURSE OF DEALING.

5.4 LIMITATION OF LIABILITY. THE CUMULATIVE LIABILITY OF ROGUE WAVE TO COMPANY FOR ALL CLAIMS RELATING TO THE PRODUCTS AND THE AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID TO ROGUE WAVE HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE; HOWEVER, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVIDED IN SECTION 6 HEREOF. ROGUE WAVE SHALL HAVE NO LIABILITY FOR LOSS OF DATA OR DOCUMENTATION, IT BEING UNDERSTOOD THAT COMPANY IS RESPONSIBLE FOR REASONABLE BACK-UP PRECAUTIONS. IN NO EVENT SHALL ROGUE WAVE BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST COMPANY, EVEN IF ROGUE WAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. COMPANY MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (E.G., CONSUMER LAWS) THAT DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF SUCH LAWS APPLY, CERTAIN EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO COMPANY; HOWEVER, ALL OTHER RESTRICTIONS AND LIMITATIONS SHALL REMAIN IN EFFECT.

6. INDEMNIFICATION. Rogue Wave agrees to defend Company from and against any third party claims alleging that the Products furnished and used within the scope of the Agreement infringes or misappropriates a U.S. patent issued as of the Effective Date, copyright, trademark or trade secret and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of a Products by anyone other than Rogue Wave or its duly authorized agent; (ii) the incorporation into the Products of any information provided by or requested by Company; (iii) a combination of the Products with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or

(iv) the use of a version of a Products other than the then-current version if the infringement would have been avoided by using of the then-current version. In the event a Product is held or is believed by Rogue Wave to infringe, Rogue Wave may, at its sole option and expense, elect to (a) modify the Product so that it is non-infringing; (b) replace the Product with non-infringing Product which is functionally equivalent; (c) obtain a license for Company to continue to use the Product as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the license for the infringing Product and refund the license fees paid for that Product, prorated over a five (5) year term from the Effective Date. THIS SECTION 6 STATES ROGUE WAVE'S ENTIRE LIABILITY AND COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND. Rogue Wave's indemnification obligations under this Section 6 are conditioned upon the Company (a) giving prompt notice of the claim to Rogue Wave; (b) granting sole control of the defense or settlement of the claim or action to Rogue Wave; and (c) providing reasonable cooperation to Rogue Wave and, at Rogue Wave's request and expense, assistance in the defense or settlement of the claim.

7. TERM AND TERMINATION. The term of the Agreement shall begin on the date Company installs or uses the Products (the "Effective Date") and continue until terminated by either party as set forth below. The Agreement or a specific license hereunder may be terminated immediately upon written notice by either party (a) upon the material breach by the other party of its obligations under the Agreement (including nonpayment of any fees or expenses), which breach has not been cured within thirty (30) days after the breaching party has received written notice thereof, or (b) if the other party violates its confidentiality obligations or the license grants and restrictions in the Agreement. Upon termination of the Agreement for any reason the following terms shall apply: (i) all rights granted under the Agreement will immediately terminate and Company must immediately stop all use of the Products; and (ii) Company must return to Rogue Wave or destroy all copies of the Products provided to or made by or on behalf of Company, and will, within ten (10) days after the effective date of termination, provide Rogue Wave with written certification that all such copies have been returned or destroyed. Termination of the Agreement will not affect Company's obligation to pay all amounts accrued prior to the effective date of termination.

8. MISCELLANEOUS.

8.1 Severability. If any term or provision of the Agreement is found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, the Agreement will remain in full force and effect, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

8.2 Assignment. If Company wishes to assign or otherwise transfer the Agreement to anyone, Company must obtain Rogue Wave's prior written consent, which consent shall not be unreasonably withheld or delayed, provided: (a) such assignee is not a direct competitor of Rogue Wave; (b) such assignment does not interfere with the performance of obligations under the Agreement; (c) such assignment does not change the scope of the usage and the intent contemplated by the parties under the Agreement; and (d) such assignment is not pursuant to bankruptcy proceedings involving Company. Any assignment or transfer in

violation of the above is void. The Agreement will be binding on the parties, their successors and permitted assigns.

8.3 Governing Law/Forum Selection. The Agreement and the parties' rights and obligations hereunder shall be solely and exclusively construed, interpreted and enforced under and in accordance with the laws of the State of Colorado, United States of America, without any reference to conflicts of law principles. The parties agree that the U.N. Convention on the International Sale of Goods shall not apply to the Agreement. Any and all disputes between the parties shall be brought and resolved solely and exclusively in the state or federal courts located in the State of Colorado, United States of America. Both parties hereby irrevocably consent to the jurisdiction of such courts and service of process in connection therewith. Any judgment rendered by such courts may be entered and enforced by any court having jurisdiction over the party against which an award is entered or its assets. Both parties hereby irrevocably waive any objections to the jurisdiction of such courts based on any ground, including without limitation improper venue or forum non conveniens.

8.4 No Joint Venture. Nothing contained in the Agreement will be construed so as to make the parties partners or joint venturers or to permit either party to bind the other party to any agreement or purport to act on behalf of the other party in any respect.

8.5 Waiver and Modifications. Failure by either party to enforce any rights under the Agreement will not be construed as a waiver of such rights, and a waiver by either party of a default hereunder in one or more instances will not be construed as constituting a continuing waiver or as a waiver in other instances. No modification of the Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

8.6 Import/Export Law. The Products may contain technical data (e.g., encryption technology) the export, re-export, transfer or sale of which is controlled by U.S. export control laws. Company agrees that diversion of the Products contrary to U.S. law is prohibited. Company acknowledges that other nations' laws may apply to the Products. In particular, several jurisdictions have controls that may apply to Products containing encryption technology. Accordingly, in express consideration for receipt of the Products, Company agrees to comply with all applicable laws that may impose registration, reporting, licensing, or other requirements on the Products. Company may not, import, use or otherwise export or re-export the Products except as authorized by United States law and the laws of the jurisdiction in which the Products were obtained.

8.7 U.S. Government Rights. For any software licensed directly or indirectly on behalf of a unit or agency of the United States Government, this provision applies. The software: (a) was developed at private expense and is in all respects the proprietary information of Rogue Wave; (b) was not developed with government funds; (c) are a trade secret of Rogue Wave for all purposes of the Freedom of Information Act; (d) is a commercial items and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication or disclosure of the Products is subject to the restrictions set forth by Rogue Wave.

8.8 English Language. The parties hereto have expressly required that the present Agreement be drawn up in the English language. / Les parties aux

présentes, ont expressément exigé que la présente Convention soient réédigées en langue anglaise.

8.9 Entire Agreement. The Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all previous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof. Any term or condition in any purchase order or other document furnished by Company that is in addition to or inconsistent with the agreement is hereby expressly rejected.

THE PRODUCTS ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

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